SUPREME COURT, U. S.
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MICHAEL RODAK, JR., CLERK

No. 73-722

In the Supreme Court of the United States

OCTOBER TERM, 1973

HOWARD WAYNE MOSTAD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D. C. 20530.

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After a jury-waived trial in the United States District Court for the District of Minnesota, petitioner, a previously convicted felon, was convicted on two counts of receiving firearms which had travelled in interstate commerce, in violation of 18 U.S.C. App. 1202(a)(1) (Pet. App. A1-A9). He was sentenced to two years' imprisonment on each count, the sentences to run consecutively. The court of appeals affirmed (Pet. App. A10-A13).

Petitioner was charged in the indictment with

thirteen counts of unlawful possession of firearms in violation of 18 U.S.C. App. 1202(a)(1).[1] The facts were stipulated at trial (Pet. App. A-2). Petitioner possessed the firearms, which had moved in interstate commerce, and they were discovered in his house on June 13, 1972. It was further stipulated that petitioner was convicted in Minnesota of burglary, a felony, and placed on probation. On January 7, 1972, a Minnesota State Court ordered, pursuant to a state statute permitting restoration of civil rights upon expiration of sentence (Pet. 5), that petitioner be "discharged from probation, restored to all civil rights and to full citizenship with full right to vote and hold office the same as if said conviction had not taken place" (Pet. App. A14-A15).

Petitioner contends that his conviction under 18 U.S.C. App. 1202(a)(1) is invalid because the state court order restoring his civil rights brings him within 18 U.S.C. App. 1203(2), which exempts from the coverage of section 1202(a)(1) "any person who has been pardoned by * * * the chief executive of a State and has expressly been authorized by * * * such chief executive * * * to receive, possess, or transport in commerce a firearm." This contention was thoroughly examined and properly rejected in the opinions of

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[1] Through an agreement with the government, petitioner was convicted and sentenced on only two counts (Pet. App. A-10. The district court opinion erroneously indicated that petitioner was found guilty on all thirteen counts (Pet. App. A-9).

both the district court and court of appeals, on which we rely (Pet. App. A1-A13).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

FEBRUARY 1974.

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